

Western Australia

District Court Rules 2005

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District Court Rules 2005

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District Court Rules 2005

Part 1 — Preliminary

1. Citation

These rules are the *District Court Rules 2005*.

2. Commencement

These rules come into operation on 30 May 2005.

3. Interpretation

In these rules, unless the contrary intention appears —

address for service has a meaning affected by rule 17;

audio link has the meaning given to that term by the *Evidence Act 1906* section 120;

case means any proceeding in the Court involving or in connection with the Court's civil or appellate jurisdiction, irrespective of how it was commenced;

file a document, means to file it at the relevant registry together with any fee required to be paid under the *District Court (Fees) Regulations 2002*;

file and serve has the meaning given by rule 4;

Form, if followed by a number, means the form of that number in Schedule 1;

Judge means a District Court Judge;

lawyer means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

lay Registrar means a Registrar who is not a legally qualified Registrar;

legally qualified Registrar means a Registrar who is or has been a legal practitioner within the meaning of the *Legal Practice Act 2003*;

personal injuries action means an action in which a claim is made in respect of —

- (a) a person's personal injuries (including any illness suffered by him or her and any impairment of his or her physical or mental condition); or
- (b) a person's death;

record means any thing or process —

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

registry means a registry of the Court;

relevant registry to a case, means the registry of the Court where the documents relating to the case are being held;

RSC means the *Rules of the Supreme Court 1971*;

rules of court means these rules and, where applicable, the RSC;

serve means to serve in accordance with rule 21;

settle a case, includes to compromise the case;

video link has the meaning given to that term by the *Evidence Act 1906* section 120;

working day means a day other than a Saturday, a Sunday, or a public holiday throughout the State.

4. “File and serve”, meaning of

If these rules require a person to file and serve a document, then unless these rules expressly provide otherwise, the person must —

- (a) file the document within any time limit for doing so; and
- (b) after filing the document, serve it on the other party or parties within 5 working days after the date on which it is filed.

5. Application of these rules

- (1) These rules apply to and in respect of every case other than a case —
 - (a) that was commenced by writ before 30 May 2005; and
 - (b) in which an appearance was entered before 30 May 2005.
- (2) If a case is one to which these rules do not apply by virtue of subrule (1) —
 - (a) the *District Court Rules 1996* apply to and in respect of it, despite rule 72; and
 - (b) the Court may at any time order that these rules apply to and in respect of it, despite subrule (1).
- (3) If an order is made under subrule (2)(b) in respect of a case, then, subject to the order, the *District Court Rules 1996* cease to apply to and in respect of the case.
- (4) Despite subrules (1) and (2), Part 8 applies to and in respect of any case in which there is a judgment, as that term is defined in the *Civil Judgments Enforcement Act 2004*, that may be enforced under that Act.

[Rule 5 inserted in Gazette 23 Dec 2005 p. 6271.]

6. Application of Rules of the Supreme Court 1971

- (1) The RSC apply to and in respect of any case in the Court.

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- (2) For the purposes of subrule (1) —
 - (a) a reference in the RSC to “the Court” is to be taken as being a reference to the District Court, unless the context requires otherwise; and
 - (b) a reference in the RSC to the RSC (whether “these Rules” or other words are used) is to be taken as including a reference to these rules, unless the context requires otherwise.
- (3) If there is a conflict or inconsistency between these rules and the RSC, these rules prevail.

Part 2 — Administrative matters

Division 1 — Registry matters

7. Court's seal applied electronically, effect of

If the Court issues a document in an electronic form that bears a facsimile of the Court's seal, the sealed document as it appears electronically, or as it appears when printed on paper, is to be taken to have the same effect as if the Court's seal had been lawfully applied to it by hand by an officer of the Court.

Division 2 — Registrars' jurisdiction

8. Registrars' general jurisdiction

- (1) A legally qualified Registrar may deal with any proceedings that a Judge may deal with in chambers other than —
 - (a) proceedings involving a review of the taxation of costs;
 - (b) proceedings in relation to an originating summons that raises for determination —
 - (i) a question of law;
 - (ii) a question as to the construction of a statute or document;
 - (iii) a question arising out of an interest in land; or
 - (iv) a question arising out of or connected with a contract between a vendor and purchaser of land;
 - (c) proceedings claiming an injunction or other order under the *Supreme Court Act 1935* section 25(9);
 - (d) proceedings that under rules of court are to be dealt with by a Judge; and
 - (e) proceedings that the Chief Judge directs are to be dealt with by a Judge.

- (2) A lay Registrar may do any of the following —
- (a) conduct a case management hearing under Part 4 and make any order that may be made at such a hearing;
 - (b) conduct a pre-trial conference under Part 4 and make any order that may be made at such a conference;
 - (c) conduct a listing conference under Part 4 and make any order that may be made at such a conference;
 - (d) during the conduct of a pre-trial conference or a listing conference, settle, sign and seal an order under the RSC Order 43 Rule 16;
 - (e) at times other than during the conduct of a pre-trial conference or a listing conference, settle, sign and seal an order under the RSC Order 43 Rule 16 if the solicitors for the parties to proceedings have, under that rule, filed a written consent to the making of the order.

[Rule 8 amended in Gazette 31 Jul 2007 p. 3808.]

9. Registrar may be ordered to take account etc.

- (1) If in any proceedings the Court orders that an account be taken or that an inquiry be made, it may order that it be done by a legally qualified Registrar.
- (2) When or after making an order under subrule (1) the Court may give orders or directions to assist the Registrar.
- (3) While a Registrar is taking an account or making an inquiry, a party may apply at any time, without a summons, to have the proceedings dealt with by a Judge in which case the Registrar must adjourn the proceedings accordingly.

[Rule 9 amended in Gazette 31 Jul 2007 p. 3808.]

10. Registrar may be required to calculate interest etc.

- (1) A Judge may direct that the calculation of any interest, or the apportionment of any fund, for the purposes of a judgment be

done and certified by a legally qualified Registrar on the judgment.

- (2) The certificate of a Registrar has effect according to its tenor without any further order of the Court.

[Rule 10 amended in Gazette 31 Jul 2007 p. 3808.]

11. Registrars' matters, when may be listed before Judge

Proceedings that may be dealt with by a Registrar are not to be listed before a Judge except —

- (a) as provided for in rule 9(3);
- (b) on the reference of a Registrar under rule 12;
- (c) on an appeal to a Judge under rule 15;
- (d) in the case of a case management hearing, pre-trial conference, or a listing conference, under Part 4, on the order of a Judge;
- (e) in the case of an application in an action or matter that is made after the action or matter is listed for trial; or
- (f) with leave from a Judge.

12. Registrar may refer matter to Judge

- (1) A Registrar may refer any proceedings before him or her to a Judge who may deal with them or refer them back with or without directions.
- (2) Pending the determination of the proceedings the Registrar may make an interim order.

13. Registrars' powers to obtain evidence etc.

For the purpose of any proceedings that are to be dealt with by a legally qualified Registrar, the Registrar may —

- (a) summons a person to appear before him or her to give evidence orally;

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- (b) summons a person to appear before him or her to produce a document or other thing;
- (c) examine a person, either orally or by written interrogatories; and
- (d) issue advertisements.

[Rule 13 amended in Gazette 31 Jul 2007 p. 3808.]

14. Registrars' office taken to be Judges' chambers

- (1) Any place where a legally qualified Registrar sits is to be taken to be a Judge's chambers for the purpose of any proceedings which under rules of court may be dealt with by a Registrar.
- (2) Subject to rule 8, for the purpose of proceedings before a Registrar, a reference in rules of court to the Court includes a reference to a Registrar.

[Rule 14 amended in Gazette 31 Jul 2007 p. 3808-9.]

Division 3 — Appeals from Registrars

15. Appeal lies from Registrar to a Judge

- (1) If a party is dissatisfied with a decision of a Registrar the party may appeal to a Judge.
- (2) The appeal must be commenced within 10 days after the date of the decision or such longer period as a Judge or legally qualified Registrar may allow.
- (3) The appeal must be commenced by filing and serving a notice that —
 - (a) sets out the particulars of the Registrar's decision or that part of it to which the appeal relates; and
 - (b) sets out the final orders that it is proposed the Court should make on the appeal.

- (4) There must be at least 7 clear days between service of the notice and the date for the hearing of the appeal, unless otherwise ordered.
- (4a) On receiving notice from the Court of the date of the hearing of the appeal, a party who appeals under this rule must serve notice of the hearing date on each other party.
- (5) The appeal does not operate as a stay of proceedings unless a Judge or legally qualified Registrar orders otherwise.
- (6) The appeal is to be by way of a new hearing of the matter that was before the Registrar.

[Rule 15 amended in Gazette 31 Jul 2007 p. 3809.]

16. Directions hearing for appeals from Registrars

- (1) Not less than 7 days after an appeal is commenced, a legally qualified Registrar may summons the parties to the appeal to a directions hearing before a legally qualified Registrar.
- (2) At the directions hearing the Registrar may make any order or direction that in his or her opinion will or may facilitate the appeal being conducted efficiently, economically and expeditiously, including —
 - (a) directions as to how the material necessary to determine the appeal is to be presented; and
 - (b) directions setting the date, time and length of time for the hearing of the appeal.
- (3) At the directions hearing the Registrar, with the consent of the parties, may make an order that concludes the appeal.

[Rule 16 amended in Gazette 31 Jul 2007 p. 3809.]

Part 3 — Filing and service of documents

[Heading amended in Gazette 31 Jul 2007 p. 3809.]

[Division 1 (r. 17, 18) deleted in Gazette 31 Jul 2007 p. 3809.]

Division 2 — Filing documents electronically

19. Some documents may be filed by fax

- (1) Subject to this rule, a document may be filed by fax.
- (2) A person wanting to file a document at a registry by fax must use the published fax number for that registry.
- (3) A document that, with any attachments and a cover page, is more than 20 pages long, must not be filed by fax and any such document received by a registry is to be taken not to have been filed.
- (4) A document that is sent by fax to a registry must have a cover page stating —
 - (a) the sender's name, postal address, document exchange number (if any), telephone number and fax number; and
 - (b) the number of pages (including the cover page) being sent by fax.
- (5) A person that files a document by fax must —
 - (a) endorse the first page of the original document with —
 - (i) a statement that the document is the original of a document sent by fax; and
 - (ii) the date and time the document was sent by fax;
 - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
 - (c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.

- (6) A document filed by fax at a registry is to be taken to have been filed —
 - (a) if the whole document is received before 4.00 p.m. on a day when the registry is open for business, on that day;
 - (b) otherwise, on the next day when the registry is open for business.
- (7) A person who files a document by fax must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document by fax to file the paper version of the document.

20. Some documents may be filed using Court’s website

- (1) Subject to the requirements of the Court’s website and this rule, a person may file a document electronically by filing an electronic version of it by means of the Court’s website.
- (2) If the rules of court require a document to be signed by a person who is not, or who is not acting on behalf of, the person filing it, the document cannot be filed electronically unless it is an affidavit.
- (3) If the rules of court require a document, before it is filed, to be signed by or on behalf of the person filing it and the document is being filed electronically —
 - (a) the document need not be signed by that person; and
 - (b) the person filing the document electronically must ensure that the electronic version of the document, instead of showing a signature at any place where a signature is required, states the name of the person whose signature is required at the place.
- (4) A person who files an affidavit electronically must either file an electronic version of it that includes the signatures on it or —

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- (a) file an electronic version of it that does not include the signatures on it;
 - (b) ensure that the electronic version, instead of showing a signature at any place where a signature appears in the paper version, states the name of the person whose signature it is; and
 - (c) also file an undertaking that the person —
 - (i) has possession of the paper version signed according to law; and
 - (ii) will retain the paper version subject to any order of the Court.
- (5) A document filed electronically at a registry is to be taken to have been filed —
- (a) if the whole document is received before 4.00 p.m. on a day when the registry is open for business, on that day;
 - (b) otherwise, on the next day when the registry is open for business.
- (6) A document that is sent electronically to a registry but not in accordance with the requirements of the Court's website and this rule is to be taken not to have been filed at the registry.
- (7) A person who files a document electronically must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document electronically to file the paper version of the document.

Division 3 — Serving documents

21. Service of documents

[(1) deleted]

- (2) A document cannot be served by email under the RSC Order 72 if under rule 20(2) it cannot be filed electronically.
- (3) Rule 20(3) and (4), with any necessary changes, apply to a document being served by email in the same way as they apply to a document being filed electronically.

[(4), (5) deleted]

- (6) This rule does not prevent a person from consenting to being served in a manner other than in accordance with the rules of court.

[Rule 21 amended in Gazette 23 Dec 2005 p. 6271; 31 Jul 2007 p. 3809.]

21A. Service of documents by the Court

- (1) The service of a document on a person by the Court must be by one of the methods in the Table to this rule.
- (2) A document that is served by the Court by a method in the Table to this rule is to be taken to have been served at the time stated opposite the method in the Table, unless the contrary is proved.

Table

No.	How a document may be served on a person	When the document is to be taken to have been served
1.	By posting it to the person's address.	When it would be delivered to the address in the ordinary course of post.
2.	By putting it in a pigeonhole at the Court that is used by the person's lawyer.	On the next working day after it is put in the pigeonhole.
3.	If the person has provided a fax number under the RSC Order 71A, by sending it by fax to that number.	If the fax is sent before 4.00 p.m. on a working day, on that day. Otherwise, on the next working day after the fax is sent.
4.	If the person has provided an	If the email is sent before 4.00

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Part 3 Filing and service of documents

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No.	How a document may be served on a person	When the document is to be taken to have been served
	email address under the RSC Order 71A, by emailing it (whether or not as an attachment) to that address.	p.m. on a working day, on that day. Otherwise, on the next working day after the email is sent.
5.	If the person has provided an email address under the RSC Order 71A, by putting it in an electronic mailbox maintained by the Court and sending the person an email at that address that says it is in the mailbox.	On the next working day after the email is sent.

[Rule 21A inserted in Gazette 23 Dec 2005 p. 6271-2; amended in Gazette 31 Jul 2007 p. 3809.]

Division 4 — Miscellaneous

22. Summonses for matters in chambers

- (1) Before filing a summons to be dealt with in chambers the parties to the summons must, in good faith, attempt to resolve as many of the issues giving rise to the summons as possible.
- (2) A person filing a summons to be dealt with in chambers must include in the summons or file with the summons —
 - (a) a certificate that the parties to the summons have conferred about the issues giving rise to the summons and have not resolved them; or
 - (b) a certificate that the parties to the summons have not conferred about the issues giving rise to the summons and the reasons why they have not conferred.

[Rule 22 amended in Gazette 31 Jul 2007 p. 3810.]

Part 4 — Case management

Division 1 — Preliminary

23. Interpretation

In this Part, unless the contrary intention appears —

case management direction is defined by rule 24;

enforcement order is defined by rule 25;

mediator means a legally qualified Registrar, or another person, who is approved as a mediator by the Chief Judge.

[Rule 23 amended in Gazette 31 Jul 2007 p. 3810.]

24. Case management direction, meaning of

- (1) A case management direction is any procedural direction that in the Court's opinion it is just to make in a case to facilitate the case being conducted and concluded efficiently, economically and expeditiously.
- (2) Without limiting subrule (1), a case management direction may —
 - (a) dispense with all or any or any further pleadings;
 - (b) direct that specified pleadings be filed;
 - (c) dispense with any interlocutory proceedings;
 - (d) as to the hearing of any interlocutory application —
 - (i) direct the parties to confer in order to identify the issues between them and resolve as many as possible before the hearing and to identify the issues to be heard;
 - (ii) direct the parties to file and exchange memoranda before the hearing in order to identify the issues to be heard;
 - (iii) give directions as to the use of videotapes, films, computers and other technology at the hearing;

- (iv) give directions for the speedier and more effective recording of evidence at the hearing;
- (e) direct some or all of the parties to confer on a “without prejudice” basis in order to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried and, as to the conference —
 - (i) direct that it be conducted by a mediator; but not, unless the parties consent, a mediator who is not a Registrar and whom a party would become liable to remunerate;
 - (ii) give directions for the purpose of rule 35(7);
 - (iii) if good cause is shown, direct that it operates as a stay of proceedings;
 - (iv) give any other directions that are necessary;
- (f) direct that experts, whose reports have been exchanged, confer on a “without prejudice” basis in order to identify the differences between them and to resolve as many as possible;
- (g) as to —
 - (i) the hearing of any interlocutory application; or
 - (ii) any conference directed under paragraph (d)(i), (e) or (f),direct that it be conducted, and any evidence in relation to it be provided, by fax or email or by an audio link or a video link;
- (ga) direct that a party file and serve a concise statement of the issues of fact or law that the party contends will need to be determined at trial;
- (gb) direct that a party file and serve a chronology of events relevant to the party’s case;

- (gc) dispense with a requirement to file and serve a document under Part 4A, or alter the day on or by which a party must comply with such a requirement;
- (h) direct the mode by which particular facts may be proved at trial;
- (i) direct that evidence of any particular fact, to be specified in the direction, shall be given at the trial by statement on oath of information and belief, or by production of documents or entries in books or by copies of documents or entries or otherwise as the Court may direct;
- (j) direct a party to serve on the other parties, at such times as shall be directed, a signed written statement of the proposed evidence in chief of each witness to be called by that party;
- (k) direct that a signed written statement referred to in paragraph (j) or any part of it stand as the evidence in chief of the witness;
- [(l), (m) deleted]*
- (n) direct a lawyer for a party to give the party written notice of any or all of the legal costs and disbursements referred to in rule 36(1);
- (o) direct a party or the lawyer for a party to attend certain proceedings specified in the direction;
- (p) in special circumstances direct that an application by a party made under this Division operate as a stay of proceedings;
- (q) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a decision made under this Part operate as a stay of proceedings;
- (r) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;

- (s) give directions to assist the convenience of the parties or witnesses;
 - (t) give directions as to the manner in which the parties shall defray the costs of giving effect to any case management direction;
 - (u) direct that a specified case management direction be complied with by a set date.
- (3) A case management direction shall not order the attachment or committal of a person.
- (4) A case management direction is not enforceable by a writ of attachment or an order of committal.

[Rule 24 amended in Gazette 31 Jul 2007 p. 3810.]

25. Enforcement order, meaning of

An enforcement order is —

- (a) an order as to the payment of costs;
- (b) an order as to the payment of costs of the parties on an indemnity basis, to be fixed in a manner specified in the order, and payable within 14 days after the order;
- (c) a self-executing order for judgment, striking out pleadings, or otherwise;
- (d) an order under the RSC Order 66 Rule 5.

Division 2 — Case management generally

26. Court may make case management directions etc.

At any time in a case the Court, on its own initiative after notifying the parties, or when hearing a summons for directions or any other application in a case, may review the progress of the case and may make any order that may be made under rule 32(2).

27. Case management hearing, Registrar may hold

- (1) At any time before the trial or the hearing of a case, a Registrar may summons the parties to a case management hearing.
- (2) Rules 32 to 35 apply to and in respect of the case management hearing.

[Rule 27 amended in Gazette 31 Jul 2007 p. 3810.]

Division 3 — Case management of cases commenced by writ

Subdivision 1 — Preliminary

[Heading inserted in Gazette 31 Jul 2007 p. 3811.]

28. Application of this Division

This Division applies only to a case that is an action commenced by writ.

29. Various RSC rules do not apply

The RSC Orders 29, 29A, 31A, 33 (other than Rules 9 and 10) and Order 59 rule 9 do not apply to a case.

30. Standard timetable for cases commenced by writ

- (1) For the purposes of making orders and directions under this Division in relation to a case, each stage of the case listed in the Standard timetable to this subrule should be completed within the period stated as calculated from the date on which a defence (or if there is more than one defendant, the first defence) is filed.

Standard timetable

Stage of case	Period after defence
Entry for trial	120 days
Commencement of pre-trial conference	160 days
Commencement of listing conference	200 days
Commencement of trial	290 days
Judgment	360 days

- (2) If the trial of a case takes more than one day, the period after defence for judgment is extended by the period of the trial.
- (3) The Judge who tries a case may at any time extend the period after defence for judgment.

31. Case management hearing, holding of

- (1) In this rule —
appearance means a memorandum of appearance.
- (2) This rule does not limit rule 27.
- (3) When the first appearance is filed in a case, a Registrar may summons the parties to the case to attend a case management hearing before a Registrar.
- (4) The date for the case management hearing must be at least 14 days after the date the summons is issued.
- (5) If after the first appearance is filed and before the date for the case management hearing another party files an appearance, the Registrar must summons the party to attend the case management hearing for which a summons has been issued under subrule (3), despite subrule (4).
- (6) The case management hearing may be held even if, at the time of the hearing, not all parties to the case have been served with the writ or have filed appearances.

[Rule 31 amended in Gazette 31 Jul 2007 p. 3811.]

32. Case management hearing, conduct of

- (1) At a case management hearing a Registrar must review the documents on the Court file and inquire into these matters —
 - (a) the complexity of the case;
 - (b) the need for interlocutory proceedings;
 - (c) whether the standard timetable in rule 30 is appropriate to the case;

- (d) whether rule 38(1) should not apply to the case;
 - (e) the readiness of the parties for trial.
- (2) At a case management hearing, either on the oral application of a party or, after notifying the parties, on the Registrar's own initiative, a Registrar may —
- (a) order that the standard timetable in rule 30 or some variation of it applies;
 - (b) order that any of the other rules in this Division do not apply to the case;
 - (c) make, amend or cancel any interlocutory order;
 - (d) make, amend or cancel any case management direction;
 - (e) make, amend or cancel any enforcement order;
 - (f) order that the case be managed by a Judge.
- (3) A Registrar may adjourn the case management hearing from time to time.

33. Case management directions etc. may be made in other proceedings

- (1) Without limiting rule 32, a direction or order referred to in rule 32(2) may be made, amended or cancelled —
- (a) at any time while a case management hearing is adjourned, or after a case management hearing, on the application of a party made by summons with a supporting affidavit; or
 - (b) at the hearing of a summons for —
 - (i) an interlocutory order; or
 - (ii) third party directions issued under the RSC Order 19 Rule 4.
- (2) An application made under subrule (1)(a) must specify any direction or order referred to in rule 32(2) that the party wants.

34. Duties of parties at case management hearing etc.

- (1) At a case management hearing or at the hearing of an application made under rule 33(1)(a), the parties and their lawyers must give any information and produce any documents that the Court reasonably requires other than information or documents that are privileged.
- (2) As far as is practicable a party must give another party at least 2 clear days' notice of any direction or order referred to in rule 32(2) that the party wants made, whether at a case management hearing or otherwise, and that is not stated in a written application.

Subdivision 2 — Mediations

[Heading inserted in Gazette 31 Jul 2007 p. 3811.]

35. Mediations

- (1) This rule applies if the Court makes a case management direction that directs any parties to confer with a mediator.
- (2) The direction does not operate as a stay of proceedings unless the Court orders otherwise.
- (3) Unless the Court has specified a time and place for the conference, the parties must take any steps necessary and obey any relevant case management directions to ensure that it takes place without delay.
- (4) A party must attend the conference in person or, if the party is a body corporate, by an agent who is authorised by the body to conduct settlement negotiations and to settle the case.
- (5) Each party's costs of and incidental to the conference shall be the party's costs in the cause, unless the Court orders, or the parties agree, otherwise.

- (6) The remuneration and expenses of a mediator who is not a Registrar are to be paid by the parties in equal shares, unless the Court orders, or the parties agree, otherwise.
- (7) Within 2 weeks after the conclusion of the conference, the party ordered by the Court to do so must file a report signed by or on behalf of the parties concerned —
 - (a) confirming that the conference took place as directed; and
 - (b) recording the substance of any resolution or narrowing of the differences between the parties achieved as a result of the conference.
- (8) The mediator —
 - (a) must not, unless the parties agree, report to the Court about the conference;
 - (b) whether or not the parties agree, may report to the Court any failure by a party to cooperate in the conference.
- (9) A report made under subrule (8)(b) must not be disclosed to the trial judge except for the purposes of determining any question as to costs or as to the remuneration and expenses of a mediator.
- (10) Rule 41, other than subrule (3), applies to the conference as if any reference in it to a pre-trial conference were a reference to the conference.

[Rule 35 amended in Gazette 23 Dec 2005 p. 6272.]

35A. Mediation may serve as pre-trial conference

- (1) If, pursuant to a case management direction, the parties to a case have conferred with a mediator, the Court may order that there is not to be a pre-trial conference in the case.
- (2) An order under subrule (1) may be made —
 - (a) at the conference with the mediator, if the mediator is a legally qualified Registrar;
 - (b) after the conference with the mediator;

- (c) before or after the case is entered for trial;
 - (d) even if notice of a pre-trial conference has been given under rule 39;
 - (e) on the application of a party or, after notifying the parties, on the Court's own initiative.
- (3) If the Court makes an order under subrule (1), rules 40(5), (6) and (7), 41 and 42 apply as if the conference with the mediator had occurred at, or as ordered in, a pre-trial conference.

[Rule 35A inserted in Gazette 23 Dec 2005 p. 6272-3; amended in Gazette 31 Jul 2007 p. 3811.]

Subdivision 3 — Entry for trial, and ancillary matters

[Heading inserted in Gazette 31 Jul 2007 p. 3811.]

36. Legal costs, lawyer to notify client of

- (1) Unless otherwise ordered, a lawyer for a party to a case must not enter the case for trial unless the lawyer has given the party written notice of—
- (a) the approximate legal costs and disbursements of the party up to and including giving the notice;
 - (b) the estimated future legal costs and disbursements of the party up to but not including the trial;
 - (c) the estimated length of the trial and the legal costs and disbursements associated with it;
 - (d) the estimated legal costs and disbursements that the party would have to pay to another party if the party were to lose the case.
- (2) Within 14 days after the date on which a party is served with a Form 1 (Entry for trial), the lawyer for the party must give the party written notice of the legal costs and disbursements referred to in subrule (1).

37. Entering a case for trial

- (1) The plaintiff must enter the case for trial on or before the date for entry for trial in the timetable applicable to the case.
- (2) Subrule (1) does not affect the operation of the RSC Order 36A.
- (3) To enter a case for trial the plaintiff must file and serve a Form 1 (Entry for trial) which must state the dates, within 40 days after the date of the form, when the parties are not available to attend a pre-trial conference.
- (4) For the purposes of completing Form 1 —
 - (a) the plaintiff, at least 14 days before the date on which the plaintiff intends to enter the case for trial, must ask each other party to tell the plaintiff on which dates, within 40 days after that date, the party will not be available to attend a pre-trial conference; and
 - (b) a party that does not advise the plaintiff within 7 days after the plaintiff's request of the dates on which that party will not be available to attend a pre-trial conference is to be taken to be available on any date.

[Rule 37 amended in Gazette 31 Jul 2007 p. 3811.]

38. Plaintiff failing to enter case for trial, consequences

- (1) If the plaintiff does not enter the case for trial on or before the date for entry for trial in the timetable applicable to the case, the relevant registry must send each party a Form 2 (Notice of default (entry for trial)).
- (2) At any time after receiving a Form 2, a party, other than the plaintiff, may enter the case for trial.
- (3) Rule 37(3), with any necessary changes, applies if a party other than the plaintiff enters the case for trial.
- (4) If a party other than the plaintiff enters the case for trial, then, for the purposes of completing Form 1, all other parties (including the plaintiff) are to be taken to be available to attend

a pre-trial conference on any date unless notice to the contrary is filed prior to when the date of the pre-trial conference is set.

- (5) If under subrule (2) a case is entered for trial at a time when, by virtue of the Form 2 sent to the parties and rule 44(2) the case is inactive, the case ceases to be inactive.
- (6) Subrules (2) and (5) do not prevent the plaintiff from complying with rule 44(1) or applying to the Court under rule 45.

Subdivision 4 — Pre-trial conference, and ancillary matters

[Heading inserted in Gazette 31 Jul 2007 p. 3811.]

39. Pre-trial conference, preliminary matters

- (1) When a case is entered for trial the relevant registry must give each party notice of the date, time and place of the pre-trial conference, unless an order has been made under rule 35A.
- (2) A pre-trial conference must be held before a Registrar unless a Judge or legally qualified Registrar has ordered otherwise.

[Rule 39 amended in Gazette 23 Dec 2005 p. 6273; 31 Jul 2007 p. 3811.]

40. Pre-trial conference

- (1) Unless otherwise ordered, a party must attend a pre-trial conference in person or, if the party is a body corporate, by an agent who is authorised by the body to conduct settlement negotiations and to settle the case.
- (2) If at a pre-trial conference the presiding officer is satisfied that a party is not ready for trial, the officer may adjourn the conference and make, amend or cancel any direction or order referred to in rule 32(2).
- (3) At a pre-trial conference the parties must, in good faith, attempt to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried.

- (4) At a pre-trial conference the presiding officer may either —
- (a) mediate between the parties; or
 - (b) order the parties to attend before a mediator, arbitrator or other person who provides alternative dispute resolution services (but not, unless the parties consent, a person whom a party would become liable to remunerate),
- in order to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried.
- (4a) The presiding officer need not act under subrule (4) if, pursuant to a case management direction, the parties have conferred with a mediator.
- (5) If the mediation referred to in subrule (4) or (4a) has not resulted in the settlement of the case, the presiding officer must either —
- (a) order the parties to attend a listing conference and make any orders under rule 42 that are needed; or
 - (b) list the case for trial if satisfied about the matters in subrule (6).
- (6) The presiding officer must not list a case for trial under subrule (5) unless satisfied —
- (a) that the lawyers who will appear at trial for the parties have all been fully briefed and that all parties have been advised by their lawyers about their prospects at trial;
 - (b) that all parties have made reasonable efforts to agree on —
 - (i) facts that are not the subject of real controversy;
 - (ii) the tender of any expert's report without the need for the expert to be called;
 - (c) that a reliable estimate has been made as to the probable length of the trial; and

- (d) that no useful purpose would be served by ordering the parties to attend a listing conference and making any order under rule 42.
- (7) At a pre-trial conference the presiding officer may make orders as to costs including, if a case is settled, orders as to costs reserved and the costs of interrogatories.
- (8) The presiding officer may adjourn a pre-trial conference from time to time.

[Rule 40 amended in Gazette 23 Dec 2005 p. 6273.]

41. Pre-trial conference, ancillary matters

- (1) Evidence of anything said or any admission made in the course of a pre-trial conference is not admissible at the trial of the case.
- (2) Subrule (1) does not apply —
 - (a) to the hearing of an application for costs arising out of a pre-trial conference; or
 - (b) to anything said or any admission made that all parties at the conference, in an agreement recorded in writing by the presiding officer, agree is admissible at the trial.
- (3) If the parties at a pre-trial conference agree to settle the case, then unless otherwise ordered —
 - (a) each party and the party's lawyer must sign and file and serve a written consent to the making of an order giving effect to the settlement; and
 - (b) judgment is to be entered, or final orders are to be made, at the pre-trial conference unless a Judge's approval of the judgment or orders is required and a Registrar is presiding.
- (4) The presiding officer, whether or not the parties agree, may report to the Court any failure by a party to cooperate in the pre-trial conference.

[Rule 41 amended in Gazette 31 Jul 2007 p. 3812.]

Subdivision 5 — Listing conference

[Heading inserted in Gazette 31 Jul 2007 p. 3812.]

42. Listing conference, orders for the purpose of

- (1) If under rule 40(5)(a) the presiding officer orders the parties to attend a listing conference, then, either at the request of the parties or, after notifying the parties, on the officer's own initiative, the officer may —

[(a), (b) deleted]

- (c) order the parties to exchange, within such period as the officer orders, any medical or expert evidence that has not already been exchanged under the RSC Order 36A;
- (d) make, amend or cancel any case management direction;
- (e) make, amend or cancel any enforcement order;
- (f) order that the case be managed by a Judge.

[(2), (3) deleted]

[Rule 42 amended in Gazette 31 Jul 2007 p. 3812.]

43. Listing conference

- (1) A listing conference must be held before a Registrar unless a Registrar or a Judge has ordered otherwise.
- (2) A listing conference must be attended by the lawyers who will appear at trial for the parties unless subrule (3) applies.
- (3) The lawyer who will appear at trial for a party need not attend a listing conference if his or her instructing lawyer attends and tenders the other's certificate as to —
 - (a) the estimated length of the trial;
 - (b) the number of witnesses that the party intends to call;
 - (c) whether there are any special circumstances affecting the date or time when any particular witness can be called;

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- (d) whether any particular witness will be attending from a long distance or from outside the State;
 - (e) whether an interpreter will be needed;
 - (f) whether an audio link or a video link will be needed;
 - (g) whether the use of any technology would allow the trial to be conducted more efficiently, economically or expeditiously;
 - (h) whether there is any matter known to the lawyer that is likely to interfere with the trial being conducted efficiently, economically and expeditiously; and
 - (i) the fact that the parties have made reasonable efforts to reach agreement on —
 - (i) facts that are not the subject of real controversy; and
 - (ii) the tender of experts' reports (if any) without the need for the experts to be called.
- (3a) The lawyer who will appear at trial for a party must certify that he or she has reviewed the pleadings and is satisfied that they adequately define all the issues of fact or law that the party contends will need to be determined at trial, and the document containing this certification must be tendered at the listing conference.
- (4) At a listing conference the presiding officer must list the case for trial only if any order or direction previously made has been complied with or, if not, if appropriate orders in default have been made.
- (5) At a listing conference the presiding officer may make orders as to costs including, if a case is settled, orders as to costs reserved and the costs of interrogatories.
- (6) The presiding officer may adjourn a listing conference from time to time.

[Rule 43 amended in Gazette 31 Jul 2007 p. 3812.]

Subdivision 6 — Inactive cases

[Heading inserted in Gazette 31 Jul 2007 p. 3812.]

44. Notice of default, effect of disobedience to

- (1) If a Form 2 is sent in relation to a case, the plaintiff must, on or before the date specified in the form (which must be at least 14 days after the date of the form), enter the case for trial.
- (2) If a plaintiff does not obey a Form 2, the case becomes inactive.

45. Inactive cases, consequences

- (1) This rule applies if a case is inactive under rule 44(2).
- (2) The plaintiff must not file a Form 1 to list the case for trial or any other document (other than an application under subrule (3)) without the leave of the Court.
- (3) Within 21 days after the date specified in a Form 2, the plaintiff must apply for leave to list the case for trial or to be excused from doing so.
- (4) If—
 - (a) no application is made under subrule (3); or
 - (b) on an application made under subrule (3), leave is refused or the plaintiff is not excused,

a party that is not in default may apply for judgment in that party's favour to be entered without a trial.

- (5) If the Court grants leave on an application made under subrule (3) and is satisfied that there is no reason for the case to be inactive, it must order that the case is no longer inactive.

Part 4A — Documents to be filed, served or delivered before trial

[Heading inserted in Gazette 31 Jul 2007 p. 3812.]

45A. Application of Part

This Part applies only to a case that is an action commenced by writ.

[Rule 45A inserted in Gazette 31 Jul 2007 p. 3812.]

45B. “Trial date”, meaning of

In this Part —

trial date of a case means the day on which the trial of the case is listed to start.

[Rule 45B inserted in Gazette 31 Jul 2007 p. 3812.]

45C. Particulars of damages

- (1) This rule applies to any party to a case who claims damages in the case.
- (2) The party must file and serve particulars of damages within 60 days after the day the defence (or if there is more than one defendant, the first defence) is filed.
- (3) If the case is a personal injuries action, the particulars of damages must set out in detail the amount of money claimed for any of the following, the justification for claiming it, and how it is calculated —
 - (a) loss of earning capacity —
 - (i) past; and
 - (ii) future;
 - (b) loss of superannuation due to —
 - (i) past loss of earning capacity; and
 - (ii) future loss of earning capacity;

- (c) special damages;
 - (d) past gratuitous services;
 - (e) interest on past loss and expenditure;
 - (f) future need —
 - (i) for medical services; and
 - (ii) for nursing and other care and assistance services, whether paid or gratuitous; and
 - (iii) for appliances, and modifications to equipment and environment;
 - (g) any other discrete item of damages.
- (4) If the case is not a personal injuries action, the particulars of damages must set out in detail any amount of money claimed, the justification for claiming it, and how it is calculated.

[Rule 45C inserted in Gazette 31 Jul 2007 p. 3813.]

45D. Building and engineering contracts — actions involving claims under

- (1) In this rule —
Scott Schedule means a statement of the issues of fact and law that the plaintiff contends will need to be determined at trial.
- (2) This rule applies to a case in which a claim is made under a building or engineering contract.
- (3) The plaintiff must apply to the Court for a direction as to whether the plaintiff is to lodge a Scott Schedule.
- (4) The application must be made within 75 days after the day the defence (or if there is more than one defendant, the first defence) is filed.

[Rule 45D inserted in Gazette 31 Jul 2007 p. 3813.]

45E. Index of expert witness reports

- (1) In this rule —

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report of an expert witness includes the notes of a treating medical practitioner.

- (2) This rule applies if under rule 40(5)(a) the presiding officer orders the parties to attend a listing conference.
- (3) A party must file and serve an index of the reports of any expert witness that the party intends to tender as evidence at trial and must do so —
 - (a) at least 14 days before the day of the listing conference, if the party is the plaintiff; and
 - (b) at least 7 days before the day of the listing conference, in the case of any other party.
- (4) At any time before the 21 day period preceding the trial date, a party served with an index (**A**) may serve the party who served the index (**B**) with a notice requiring information as to the qualifications and experience of an expert witness whose report is listed in the index.
- (5) On A serving B with a notice, B must provide the information within 7 days.
- (6) Except with the leave of the Court, a party cannot tender the report of an expert witness as evidence unless the party has complied with this rule in relation to that report.

[Rule 45E inserted in Gazette 31 Jul 2007 p. 3814.]

45F. Papers for the Judge

- (1) At least 42 days before the trial date, the plaintiff must file and serve the papers for the Judge comprising —
 - (a) the pleadings, and any affidavits ordered to stand as pleadings, with any amendments to them incorporated and the dates of those amendments; and
 - (b) the particulars of damages filed and served under rule 45C; and

- (c) any request or order for particulars that has been made together with the particulars given; and
 - (d) any order for directions made under the RSC Order 19 rule 4.
- (2) If the pleadings are amended after the plaintiff has filed and served the papers referred to in subrule (1), the plaintiff must file and serve the whole of the pleadings as amended unless the Court orders otherwise.

[Rule 45F inserted in Gazette 31 Jul 2007 p. 3814.]

45G. Reception of plans etc. in evidence

- (1) The RSC Order 36 rule 4 does not apply to a case.
- (2) Unless before or at the trial the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial in a case unless at least 28 days before the trial the parties, other than the party who intends to produce it, are given the opportunity to inspect it and to agree to its admission without further proof.

[Rule 45G inserted in Gazette 10 Dec 2010 p. 6265.]

45H. Outline of submissions

- (1) A party must file and serve the “Outline of submissions” —
 - (a) 42 days before the trial date, if the party is the plaintiff; or
 - (b) 28 days before the trial date, in the case of any other party.
- (2) The Outline of submissions consists of a Form 3 to which is attached —
 - (a) a document titled “Submissions”; and
 - (b) a document titled “Legal authorities”; and
 - (c) if the party wants the Court to make orders, a document titled “List of orders wanted”; and

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- (d) if the party chooses, a document titled “Draft chronology”.
- (3) The document titled “Submissions” —
 - (a) must contain the contentions of law or fact the party intends to make at the trial, expressed so as to convey the substance of them clearly and as succinctly as possible; and
 - (b) must set out the contentions in numbered paragraphs; and
 - (c) must refer to each principal legal authority on which the party relies in support of the contention; and
 - (d) must not be more than 10 pages long; and
 - (e) must be signed by the person who prepared it.
- (4) The document titled “Legal authorities” —
 - (a) must list, and number consecutively, each principal legal authority to which the court is referred, under these headings in this order —
 - (i) “Written laws”;
 - (ii) “Judgments”;
 - (iii) “Legal texts”;and
 - (b) must mark with an asterisk any legal authority from which it is intended to read any text to the court at the hearing; and
 - (c) for each written law listed, include its short title, its jurisdiction and each relevant rule or provision of it; and

[Example:

Written laws:

*1. *Interpretation Act 1984* (WA) s. 5 “under”; s. 61.

2. *Acts Interpretation Act 1901* (Cth) s. 22(1).]

- (d) for each judgment listed, include —

- (i) first, its citation in an authorised law report (if any) and any page of it on which is a relevant passage; and
- (ii) second, its media neutral citation (if any);

[Example:

Judgments:

*3. Ward v The Queen (2000) 23 WAR 254 at 274; [2000] WASCA 413 at [106].

4. Talbot v Lane (1994) 14 WAR 120.]

and

- (e) for each authoritative legal text listed, refer to the edition concerned and to each relevant passage.
- (5) The document titled “List of orders wanted” must set out the orders that the party wants the Court to make.
- (6) The document titled “Draft chronology” must state succinctly in numbered paragraphs arranged in date order the date and facts of each event that is material to the case.

[Rule 45H inserted in Gazette 31 Jul 2007 p. 3816-17; amended in Gazette 10 Dec 2010 p. 6265.]

45I. List of witnesses

- (1) At least 7 days before the trial date for a case, a party to the case must file and serve a document listing, in the order in which they will be called, each witness that the party intends to call to give evidence and stating —
- (a) any special circumstances that affect the date or time when the witness can be called; and
 - (b) any directions that the Court has made in relation to the taking of evidence from the witness by audio link or video link.
- (2) Except with the leave of the Court, a party cannot call a witness at a trial unless the party has complied with this rule in relation to that witness.

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[Rule 45I inserted in Gazette 31 Jul 2007 p. 3817.]

Part 5 — Obtaining evidence

Division 1 — Discovery

46. RSC Order 26 modified in actions commenced by writ

- (1) The RSC Order 26 applies to an action commenced by writ, subject to this rule.
- (2) Subject to any order made by the Court, each party to the action must give each other party discovery of all documents that are or have been in the party's possession, custody or power relating to any matter in question in the action.
- (2a) If a plaintiff in a personal injuries action is required under subrule (2) to give discovery of income tax returns, the plaintiff must discover the returns lodged by the plaintiff for, at least —
 - (a) the financial year during which the incident pleaded as the cause of the personal injuries occurred; and
 - (b) each of the 2 preceding financial years.
- (3) With the consent of each other party to the action, discovery may be by way of an informal list, but otherwise shall be by way of affidavit served on the other parties.
- (4) Discovery must be given by all parties within 60 days after a defence (or if there is more than one defendant, the first defence) is filed.
- (5) The RSC Order 26 Rule 8(1) applies as if the reference to 7 days were amended to 14 days.

[Rule 46 amended in Gazette 31 Jul 2007 p. 3817.]

Division 2 — Interrogatories

47. RSC Order 27 modified

- (1) The RSC Order 27 applies, subject to this rule.

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- (2) Leave of the Court to serve notice on a party is not required under the RSC Order 27 Rule 1(1) if the party consents to being served without the leave of the Court.
- (3) Leave of the Court to serve notice on a party is not required under the RSC Order 27 Rule 1(1) if the action is a personal injuries action and —
 - (a) the notice is served within 75 days after the party files a defence; and
 - (b) the interrogatories specified in the notice relate to —
 - (i) the occurrence of the incident pleaded as the cause of the personal injuries;
 - (ii) the defendant's system for preventing incidents of the type alleged to have occurred;
 - (iii) the plaintiff's medical history in the 5 years prior to the incident;
 - (iv) the symptoms and treatment of the personal injuries pleaded; or
 - (v) the plaintiff's employment history in the 5 years prior to the accident.
- (4) A party applying for leave under the RSC Order 27 Rule 1 to serve interrogatories must —
 - (a) file and serve with the application a minute of the proposed interrogatories; and
 - (b) make the application at least 7 days before it is heard.

Part 5A — Expert Evidence

[Heading inserted in Gazette 31 Jul 2007 p. 3818.]

48. Expert witnesses, certification as to compliance with practice directions

- (1) This rule applies to the report of an expert witness that a party intends to tender as evidence other than the report of a medical expert prepared for the purposes of a personal injuries action.
- (2) The author of the report must certify in the report that he or she has read and complied with the practice direction made by the Court for the purposes of this rule.
- (3) Except with the leave of the Court, a report that has not been certified as required under subrule (2) is not admissible at trial.

[Rule 48 inserted in Gazette 31 Jul 2007 p. 3818.]

Part 5B — Applications before trial

[Heading inserted in Gazette 10 Dec 2010 p. 6265.]

48A. Amending pleadings, RSC Order 21 modified

- (1) The RSC Order 21 applies, subject to this rule.
- (2A) The RSC Order 21 rule 3 operates as if subrule (1) of it were replaced by subrule (2B) of this rule.
- (2B) A party may amend any of its pleadings, without the leave of the Court, by filing its amended pleading —
 - (a) before any party files a certificate under rule 43(3a); and
 - (b) not later than 14 days before the date fixed for the first listing conference.
- (2) The RSC Order 33 Rule 10 and rule 48B of these rules do not apply to an interlocutory application to amend pleadings.
- (3) If an application to amend a pleading is filed after a case is listed for trial, the application must be accompanied by an affidavit of the party making the application or the lawyer representing the party.
- (4) The affidavit is to set out the facts —
 - (a) that have arisen since the certificate was tendered under rule 43(3a); and
 - (b) that ground the party's or the lawyer's argument that the amendment is necessary.

[Rule 48A inserted in Gazette 31 Jul 2007 p. 3818; amended in Gazette 10 Dec 2010 p. 6265.]

48B. Interlocutory applications after listing for trial

- (1) If an application for an interlocutory order is filed after a case is listed for trial, the application must be accompanied by an affidavit of the party making the application or the lawyer representing the party.

- (2) The affidavit is to set out the facts that ground the party's or the lawyer's argument that the order is necessary.
- (3) Unless justice requires otherwise, the Court will not grant an application referred to in subrule (1) if to do so would necessitate adjourning the trial.

[Rule 48B inserted in Gazette 31 Jul 2007 p. 3818-19.]

Part 6 — Appeals to the Court

49. Interpretation

In this Part, unless the contrary intention appears —

appealable decision means an award, a determination, a finding, a judgment or any other decision, that by virtue of a written law may be the subject of an appeal to the Court but not a decision of a Registrar;

primary court in relation to an appealable decision, means the court, tribunal, person or body that made the decision.

50. Appeal, nature of

- (1) An appeal to the Court must be by way of a reconsideration of the evidence that was before the primary court unless the parties agree otherwise.
- (2) At the hearing of an appeal a party must not adduce evidence that was not adduced in the primary court except with the leave of the Court.
- (3) The Court is not to grant such leave unless satisfied there are special grounds for doing so.
- (4) This rule is subject to the written law that provides for the appeal to be made to the Court.

[Rule 50 amended in Gazette 10 Dec 2010 p. 6266.]

51. Appeal, commencement of

- (1) An appeal to the Court against an appealable decision must be commenced by filing a notice of appeal at the registry nearest to where the appealable decision was given.
- (2) A notice of appeal must —
 - (a) identify the primary court and the action or matter or proceedings in which the appealable decision was given;

- (b) except in the case of an appeal made under the *Magistrates Court (Civil Proceedings) Act 2004*, identify the written law under which the appeal is made;
 - (c) set out the particulars of the appealable decision or that part of it to which the appeal relates;
 - (d) state the grounds of appeal;
 - (e) set out the final orders that it is proposed the Court should make on the appeal; and
 - (f) include an address for service of the appellant in Australia.
- (3) The grounds of appeal in a notice of appeal must not merely allege that an appealable decision is against the weight of the evidence or that it is wrong in law, they must specify the particulars relied on to demonstrate that the decision is against the weight of the evidence and the specific reasons why it is wrong in law.
- (4) A notice of appeal must be filed and served within 21 days after the date of the appealable decision.
- (5) If an appeal is made under the *Criminal Injuries Compensation Act 2003* Part 7 —
- (a) the notice of appeal, and any other document filed in the appeal must be served on —
 - (i) the Chief Assessor of Criminal Injuries Compensation appointed under that Act; and
 - (ii) the State Solicitor's Office, on behalf of the chief executive officer of the department of the Public Service that principally assists the Minister in the administration of that Act;
- and
- (b) service of the documents may be effected by ordinary prepaid post.

[Rule 51 amended in Gazette 10 Dec 2010 p. 6266.]

52. Primary court to supply records when given notice

- (1) In this rule —
primary court case means the action, case, matter or proceedings in the primary court in which the appealable decision was made.
- (2) As soon as practicable after a notice of appeal is filed in respect of an appealable decision, a legally qualified Registrar must give the primary court concerned a copy of it.
- (3) As soon as practicable after being given the copy of the notice of appeal, the primary court must give the Court a copy of the following documents —
 - (a) any record that has been filed or filed with the primary court as required by law and that forms part of the court's record of the primary court case;
 - (b) any record admitted as evidence in the primary court case together with a list of them and the exhibit numbers given to them by the primary court;
 - (c) any record tendered in the primary court case but not admitted as evidence in the case together with a list of them and any numbers given to them by the primary court;
 - (d) the transcript of the proceedings in the primary court case or the notes made by the judicial officer who presided at the proceedings;
 - (e) the primary court's decision in the primary court case and any written reasons given for it;
 - (f) any other record held by the primary court that is or may be relevant to the appeal.
- (4) Any copy of a document given by the primary court to the Court need not be certified by the primary court.

- (5) If any of the documents given to the Court contains information to which access by any person is or should be restricted, the primary court must advise the Court.
- (6) A legally qualified Registrar may —
 - (a) request a primary court to comply with subrule (3) by a date set by the Registrar;
 - (b) decide any question that arises about what must be sent to the Court under subrule (3).
- (7) The documents given to the Court form part of the District Court's record.

[Rule 52 amended in Gazette 31 Jul 2007 p. 3819.]

53. Appeal, responding to

- (1) Within 10 days after being served with a notice of appeal a party that intends to appear as a respondent must file and serve a notice of intention to appear.
- (2) A notice of intention to appear must include a statement of the respondent's service details.
- (3) If a respondent intends to seek to uphold the appealable decision on grounds other than those relied on by the primary court that made it, or to vary the decision, or to cross-appeal, the respondent must, within 14 days after filing a notice of intention to appear, file and serve an answer.
- (4) The answer must —
 - (a) if the respondent seeks to uphold the appealable decision on grounds other than those relied on by the primary court that made it, state the grounds for doing so;
 - (b) if the respondent seeks to vary the appealable decision, state the grounds doing so;
 - (c) if the respondent is cross-appealing —

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- (i) set out the particulars of the appealable decision or that part of it to which the cross-appeal relates; and
 - (ii) state the grounds of the cross-appeal.
- (5) Rule 51(3) applies to the grounds of a cross-appeal as it does to the grounds of an appeal.

[(6) deleted]

[Rule 53 amended in Gazette 31 Jul 2007 p. 3819; 10 Dec 2010 p. 6266.]

54. Appeal, entry for hearing

- (1) The appellant must enter an appeal for hearing —
- (a) if no notice of intention to appear has been filed by a respondent — not less than 10 and not more than 30 days after the date when the respondent, or the last of the respondents, was served with the notice of appeal;
 - (b) if a notice of intention to appear, but no answer, has been filed by a respondent — not less than 14 and not more than 30 days after the appellant was served with the notice of intention to appear;
 - (c) if an answer has been filed by a respondent — within 30 days after the appellant was served with the answer.
- (2) If an appellant does not enter an appeal for hearing in accordance with subrule (1), a respondent that has filed a notice of intention to appear may enter the appeal for hearing.
- (3) If an appeal is not entered for hearing within 90 days after the notice of appeal was filed, a respondent that has filed a notice of intention to appear may apply for the appeal to be dismissed for want of prosecution.

55. Directions hearing

- (1) When an appeal is entered for hearing, a legally qualified Registrar must summons the appellant and each respondent that has filed a notice of intention to appear to attend a directions hearing before a legally qualified Registrar.
- (2) The date for the directions hearing must be at least 7 days after the date of the summons.
- (3) At the directions hearing the legally qualified Registrar may make any order or direction that in his or her opinion will or may facilitate the appeal being conducted efficiently, economically and expeditiously, including —
 - (a) an order giving leave under rule 56;
 - (b) directions as to how the material necessary to determine the appeal is to be presented;
 - (c) directions as to the preparation of appeal books, including directions as to the inclusion of some or all of a certified copy of the transcript of the proceedings in the primary court, or of a certified copy of the notes of such proceedings taken by the presiding official;
 - (d) directions fixing a timetable for interlocutory applications;
 - (e) directions setting the date, time and length of time for the hearing of the appeal; and
 - (f) any order under rule 57, other than under paragraphs (h) or (j) of that rule.

[Rule 55 amended in Gazette 31 Jul 2007 p. 3819.]

56. New grounds of appeal etc. only with leave

Except with the leave of the Court, a party to an appeal is not entitled to seek any relief or rely on any ground that is not set out in the notice of appeal or the answer, as the case may be.

57. Court's powers as to appeals

- (1) This rule is subject to the written law that provides for the appeal to made to the Court.
- (2) Before or during the hearing of an appeal, the Court, on application or, after notifying the parties, on its own initiative, and on any terms needed, may —
 - (a) order a stay of execution of any appealable decision against which an appeal has been, or the Court is satisfied will be, commenced;
 - (b) order the notice of appeal or an answer, or any part of it, to be struck out;
 - (c) order the appeal to be conducted at a different registry;
 - (d) order the appeal be heard at a different place;
 - (e) order 2 or more appeals to be consolidated;
 - (f) order the notice of appeal or an answer to be served on a person who is not a party to the appeal;
 - (g) order substituted service of any document;
 - (h) give leave under rule 50(2);
 - (i) give leave under rule 56;
 - (j) make orders as to the admission or otherwise of evidence in an affidavit;
 - (k) give leave or make an order under rule 58;
 - (l) dismiss an appeal for want of prosecution;
 - (m) adjourn the hearing of the appeal;
 - (n) adjourn the appeal to a further direction hearing before a Registrar under rule 55.

58. Discontinuance

- (1) Unless subrule (3) applies, if no respondent has filed an answer that seeks to vary the appealable decision or cross-appeals, the appellant, without the Court's leave, may discontinue an appeal at any time before it is heard.

- (2) Unless subrule (3) applies, if a respondent has filed an answer that seeks to vary the appealable decision or cross-appeals, then at any time before it is heard —
 - (a) the appellant may discontinue the appeal with the consent of the respondent; and
 - (b) the respondent may discontinue the application to vary, or the cross-appeal, with the consent of the appellant.
- (3) An appeal commenced by, or an answer filed by, a person under a disability may only be discontinued with the leave of the Court which may make any consequential order needed, including an order as to costs and the disposal of money paid to the Court as security for costs.
- (4) A party wishing to discontinue must file and serve a notice of discontinuance together with any consent of another party required by subrule (2).
- (5) In the case of a discontinuance under subrule (1), the appellant must pay the respondent's costs to the date of discontinuance unless the parties agree otherwise.
- (6) In the case of a discontinuance under subrule (2), unless the parties agree, or the Court orders, otherwise —
 - (a) if the appellant discontinues, the appellant must pay the respondent's costs to the date of discontinuance;
 - (b) if the respondent discontinues, the respondent must pay the appellant's costs to the date of discontinuance.
- (7) Unless subrule (3) applies, money paid to the Court as security for costs is to be disposed of in accordance with a filed written agreement of the parties or, in the absence of an agreement, an order of the Court.
- (8) If the parties cannot agree the amount of costs, they are to be taxed.

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59. Costs

- (1) The awarding of the costs of and incidental to an appeal is in the discretion of the Court.
- (2) On determining an appeal the Court may fix the amount of costs but otherwise they are to be taxed in accordance with determinations made by the Legal Costs Committee under the *Legal Practice Act 2003* and section 215 of that Act.
- (3) On determining an appeal, the Court may make any order as to any money paid to the Court as security for costs that is just having regard to any order made as to costs.
- (4) If the Court does not make an order under subrule (3), a legally qualified Registrar may make such an order at any time.

[Rule 59 amended in Gazette 31 Jul 2007 p. 3819; 10 Dec 2010 p. 6266.]

60. Final orders on appeal

- (1) A legally qualified Registrar must settle any order made on determining an appeal.
- (2) A legally qualified Registrar must send a copy of any order made on determining an appeal to the primary court registrar together with a copy of the judgment given on appeal and the reasons for it.

[Rule 60 amended in Gazette 31 Jul 2007 p. 3819.]

Part 7 — Hearings and trials

61. Outline of submissions etc. for certain hearings

[(1) deleted]

- (2) This rule applies to the following hearings —
- (a) the hearing of an application that a Judge or a Registrar has ordered to be subject to this rule because it involves complex or difficult issues;
 - (b) unless in a particular case the Court orders otherwise —
 - (i) a special appointment in Judge's or Registrar's chambers;
 - (ii) the hearing of an appeal from a Registrar of the Court;
 - (iii) the hearing of an appeal to the Court.
- (3) A Judge or a Registrar may make an order under subrule (2)(a) on his or her own initiative, or on an application by a party.
- (4) At least 7 clear working days before the date of the hearing, each party must file and immediately serve a list of all documents, including any affidavits, on which the party intends to rely or to which the party intends to refer at the hearing.
- (5) At least 2 clear working days before the date of the hearing, each party must file and immediately serve an Outline of submissions as described in rule 45H(2) to (6) and the reference in rule 45H(3)(a) to the trial is to be read as a reference to the hearing.

[(6) deleted]

[Rule 61 amended in Gazette 31 Jul 2007 p. 3819-20.]

Part 8 — *Civil Judgments Enforcement Act 2004* rules

62. Interpretation

In this Part, unless the contrary intention appears —

Act means the *Civil Judgments Enforcement Act 2004*;

section means a section of the Act.

63. Applications etc. that may be dealt with by a Registrar

- (1) Each of the following applications and requests, if made to the Court, may be dealt with by a Registrar —
- (a) an application made under a section listed in the Table to this subrule;
 - (b) an application for an order under section 10, 15(5)(a) or 20(3);
 - (c) an application for leave under section 13(1)(a).

Table

s. 15(1)	s. 41(2)	s. 59(1)
s. 27	s. 42(1)	s. 95(1)
s. 28	s. 49(1)	s. 101(1)
s. 32	s. 55(2)	s. 102(2)
s. 33	s. 56(1)	s. 103(2)
s. 35(1)	s. 58(1)	

- (2) A Registrar who is dealing with an application or request may exercise any power conferred by the Act on the Court in respect of the application.
- (3) A Registrar may conduct a means inquiry under section 30 and for that purpose exercise any power in section 30 or 31.

64. Registrar's decision, review of

For the purposes of section 9, Part 2 Division 3 of these rules, with any necessary changes, applies for the purpose of any review of a Registrar's decision under the Act.

Part 9 — *Misuse of Drugs Act 1981* rules

65. Interpretation

In this Part, unless the contrary intention appears —

Act means the *Misuse of Drugs Act 1981*;

application means an application under section 28(3)(b);

claimant has the same meaning as in section 28(2);

DPP means the Director of Public Prosecutions for the State;

respondent means —

- (a) in the case of an application made by a claimant, the DPP;
- (b) in the case of an application made by any other person, any claimant;

section means a section of the Act.

66. Applications, how they are to be made

- (1) An application to the Court under section 28(3)(b) must be made by filing and serving a notice of motion.
- (2) The notice of motion must set out clearly and concisely the grounds on which the application is made and must include the applicant's address for service.
- (3) When, or within 7 days after, the notice of motion is filed, the applicant must file and serve an affidavit setting out the facts relied on to support the application.
- (4) The notice of motion must be made returnable before a Judge in open court on a date, set by the Court, that is at least 21 days after the date on which the notice is filed unless —
 - (a) the respondent consents in writing to an earlier hearing and the consent is filed with the notice; or
 - (b) the Court orders the notice to be heard earlier.

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- (5) A respondent who is a police officer may be served by serving the DPP.

67. Respondent's rights and obligations

- (1) A respondent is entitled to be heard on the application.
- (2) A respondent who intends to be heard on an application must file and serve a notice of intention to appear that includes the respondent's address for service.
- (3) A respondent who has complied with subrule (2) may file an affidavit in reply to any affidavit filed in support of the application, and must serve any such affidavit in reply.

68. Court may order parties to be added

If at any time during proceedings on an application it appears to the Court that a person who is not a party to the proceedings has an interest in the property concerned, the Court on the application of a party (which may be made *ex parte*) or on its own initiative may order the person to be made a party.

69. Deponents to attend for cross examination

- (1) If the Court so orders or another party so requests, a party that has filed an affidavit in connection with an application must ensure that the person who made the affidavit attends the hearing of the application in order to be cross examined.
- (2) If the person who made the affidavit does not attend, his or her affidavit is inadmissible except with the leave of the Court.

70. Evidentiary matters

- (1) If a party to an application has been convicted after pleading guilty —
- (a) any statement of a witness that complies with *Criminal Procedure Act 2004* Schedule 3 clause 4 and that has been disclosed under section 42 or 95 of that Act; and

- (b) any recording of a witness's evidence that has been made in accordance with Schedule 3 clause 6 of that Act and that has been disclosed under section 42 or 95 of that Act,

in the prosecution of the party is admissible at the hearing of the application.

- (2) If a party to an application has been convicted after trial, the transcript of the oral evidence, and any other evidence, admitted at the trial is admissible at the hearing of the application.
- (3) With the leave of the Court, the evidence referred to in subrule (2) may be supplemented by oral evidence at the hearing or by an affidavit admitted in evidence at the hearing.

Part 10 — Miscellaneous

71. Access to records and things

(1) In this rule —

court record in respect of a case, means —

- (a) any record or thing held by the Court in respect of the case; and
- (b) the transcript of proceedings in the case before the Court.

(1A) Any person is, on payment of the prescribed fee, entitled to search for, inspect and receive a copy of any of these documents filed in a registry —

- (a) any writ and the statement of claim (if any) endorsed on it under the RSC Order 6 rule 3;
- (b) any judgment or order of the Court.

(1B) Subrule (1A) does not apply in relation to any document filed, or any judgment or order made, in any proceedings under the *Surveillance Devices Act 1998*.

(2) An application made under subrule (3), (5) or (6) must be in writing and set out the grounds of the application.

(2a) After receiving an application made under subrule (3), (5) or (6) the Court may, in writing, direct the applicant to provide additional information in the form of an affidavit.

(2b) The Court is not required to deal with an application if the applicant fails to comply with a direction under subrule (2a).

(3) A person may apply to the Court for an order that prohibits or restricts access to, or the publication or possession of, all or any part of the court record in respect of a case by a person or class of persons.

(4) A party to a case is entitled, at no charge, to inspect and obtain a copy of any part of the court record in respect of the case.

- (5) A party to a case whose access to any part of the court record in respect of the case is restricted may apply to the Court for permission to inspect or obtain a copy of it.
- (6) A person who is not a party to a case may apply to the Court for permission to inspect or obtain a copy of all or a part of the court record not referred to in subrule (1A) in respect of the case.
- (7) The Court may grant an application made under subrule (5) or (6) if satisfied —
 - (a) the applicant has sufficient cause to inspect or obtain the record in question; and
 - (b) that access to or possession of the record by the applicant would be lawful.
- (8) An order made on an application made under subrule (5) or (6) may include —
 - (a) an order that the applicant pay or make arrangements to pay the cost of supplying any copy of a court record;
 - (b) conditions on which the applicant may inspect or obtain a copy of court record.
- (9) The Court may determine the cost of making and supplying a copy of a court record.
- (10) This rule does not entitle a person to search, inspect or obtain a copy of any part of a document that contains information that the person is prevented by a written law, an order made under a written law, or an order of a court from possessing.

[Rule 71 amended in Gazette 31 Jul 2007 p. 3820; 10 Dec 2010 p. 6266-7.]

72. *District Court Rules 1996 repealed*

The *District Court Rules 1996* are repealed.

Part 11 — Transitional and savings provisions

[Heading inserted in Gazette 31 Jul 2007 p. 3820.]

73. Terms used in this Part

In this Part —

commencement means the coming into operation of the *District Court Amendment Rules 2007*;

former rules means the *District Court Rules 2005* as enacted before being amended by the *District Court Amendment Rules 2007*.

[Rule 73 inserted in Gazette 31 Jul 2007 p. 3820.]

74. Cases to which former rules apply

If immediately before the commencement a case is listed for trial or the trial of a case is being conducted, then the former rules apply to and in respect of the case.

[Rule 74 inserted in Gazette 31 Jul 2007 p. 3820.]

75. Outline of submissions for certain hearings

If immediately before the commencement —

- (a) a Judge or a Registrar has ordered under rule 61(2) that a hearing of an application is to be subject to rule 61; and
- (b) the hearing has not been held but is due to be held within 7 days,

then rule 61(1), (5) and (6) of the former rules applies to and in respect of the hearing.

[Rule 75 inserted in Gazette 31 Jul 2007 p. 3821.]

Schedule 1 — Forms

[r. 3]

1. Entry for trial (r. 37)

District Court of Western Australia	At:
Entry for trial	Number:
Matter	<i>[Names of all parties]</i>
Certificate * delete if inapplicable	The <i>[party]</i> certifies that — <ul style="list-style-type: none"> • the <i>[party]</i> has been given discovery and inspection by all of the other parties; and • *the <i>[party]</i> served interrogatories and has received answers; and • the <i>[party]</i> has complied with all directions and orders made by the Court at the case management hearing; and • the <i>[party]</i> has complied with all orders made by the Court since the case management hearing; and • no other interlocutory orders are needed; and • the <i>[party]</i> has complied with the <i>Rules of the Supreme Court 1971</i> Order 36A; and • the <i>[party]</i> has complied with the <i>District Court Rules 2005</i> rule 36(1); and • the <i>[party]</i> has complied with the <i>District Court Rules 2005</i> rule 45C; and • *the <i>[party]</i> has complied with the <i>District Court Rules 2005</i> rule 45D; and • *the <i>[party]</i> has complied with the <i>District Court Rules 2005</i> rule 45E; and • this matter is in all respects ready for trial.
Entry for trial	The <i>[party]</i> enters this matter for trial.

District Court Rules 2005

Schedule 1 Forms

cl. 1

Unavailable dates	The parties are not available for a pre-trial conference on these dates:			
Contact details of party or lawyer	Name			
	Firm			
	Address			
	Phone		Fax	
	Email			
	Reference			
Signature of party or lawyer	Party/[Party's] lawyer		Date	

[Form 1 inserted in Gazette 10 Dec 2010 p. 6267-8.]

2. Notice of default (entry for trial) (r. 38)

District Court of Western Australia		At:
Notice of default (entry for trial)		Number:
Matter	<i>[Names of all parties]</i>	
Notice to all parties	<p>The plaintiff has not entered this action for trial as required. Unless the plaintiff enters this action for trial on or before <i>[date]</i>, this action will become inactive.</p> <p>Despite the above, any party other than the plaintiff may now enter this action for trial, and may do so even if the action has become inactive.</p>	
Seal of Court		Date:

3. Outline of submissions (r. 45H, 61)

District Court of Western Australia		At:
Outline of submissions		Number:
Matter	<i>[Names of all parties]</i>	
Party filing outline	<i>[Name of party filing outline and whether plaintiff or defendant, appellant or respondent]</i>	
Notice *Delete if inapplicable	<p>Attached to this form are these documents in this order —</p> <ul style="list-style-type: none"> • Submissions; and • Legal authorities; and • *List of orders wanted; and • *Draft chronology. 	
Signature of party or lawyer	<p>.....</p> <p>Party/<i>[Party's]</i> lawyer</p>	Date:

[Form 3 inserted in Gazette 31 Jul 2007 p. 3822.]

Notes

¹ This is a compilation of the *District Court Rules 2005* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>District Court Rules 2005</i>	27 May 2005 p. 2335-92	30 May 2005 (see r. 2)
<i>District Court Amendment Rules 2005</i>	23 Dec 2005 p. 6270-3	1 Jan 2006 (see r. 2)
<i>District Court Amendment Rules 2007</i>	31 Jul 2007 p. 3807-22	31 Jul 2007
<i>District Court Amendment Rules 2010</i>	10 Dec 2010 p. 6264-8	r. 1 and 2: 10 Dec 2010 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jan 2011 (see r. 2(b))